

California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. 00-27

Resolution Amending the Water Quality Control Plan
For the Santa Ana River Basin to Incorporate Language Authorizing Compliance
Schedules in NPDES Permits

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. An updated Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) was adopted by the Regional Board on March 11, 1994, approved by the State Water Resources Control Board (SWRCB) on July 21, 1994, and approved by the Office of Administrative Law (OAL) on January 24, 1995.
2. National Pollutant Discharge Elimination System (NPDES) permits are issued for discharges of waste to surface waters pursuant to the federal Clean Water Act. Pursuant to authority provided by the California Water Code (Sections 13370 et seq.), the Regional Board issues NPDES permits in lieu of direct regulation of surface water waste discharges by the U.S. Environmental Protection Agency (EPA).
3. NPDES permits specify effluent limitations and other provisions that must be achieved to assure compliance with the water quality objectives of the affected receiving waters and protection of the beneficial uses of those waters. In some cases, immediate compliance with the effluent limitations in NPDES permits may be infeasible.
4. When immediate compliance with effluent limitations cannot be achieved because the discharger has not acted responsibly, an enforcement order to compel compliance with the effluent limitations is appropriate. An enforcement order results from a finding of permit violation. Permit violations subject the discharger to mandatory minimum penalties pursuant to Water Code Section 13385, and to citizen suits pursuant to Section 505 of the Clean Water Act.
5. In some circumstances, dischargers may be unable to comply immediately with effluent limitations through no fault of their own. In these cases, it is reasonable and appropriate to include a schedule for compliance in the NPDES permit. Provided that the discharger acts in conformance with the permit-specified schedule, then the discharger would have time to come into compliance without a finding of permit violation. This would prevent the unintended and unreasonable consequence of subjecting the discharger to citizen suits and mandatory minimum penalties.
6. In particular, dischargers may not reasonably be expected to achieve immediate compliance when the effluent limits implement new, revised or newly interpreted water quality objectives or criteria adopted by the Regional Board, SWRCB or EPA.
7. An order by the U.S. Environmental Protection Agency Administrator (*In the Matter of StarKist Caribe, Inc.* (NPDES Appeal No. 88-5)) defines the constraints on the inclusion of compliance schedules in NPDES permits. Schedules of compliance can

be included in permits for those effluent limits that implement new (adopted after July 1, 1977), revised pre-1977 or newly-interpreted water quality objectives, if explicit authorization for such schedules is included in the Basin Plan.

8. With certain exceptions, the Basin Plan does not include explicit authorization for compliance schedules in NPDES permits.
9. To assure water quality and beneficial use protection in a reasonable and fair manner, it is appropriate to amend the Basin Plan to incorporate language authorizing the inclusion of compliance schedules in NPDES permits under certain circumstances.
10. The Regional Board discussed this matter at a workshop conducted on February 25, 2000 after notice was given to all interested persons in accordance with Section 13244 of the California Water Code. Based on the discussion at that workshop, the Board directed staff to prepare the appropriate Basin Plan amendment and related documentation to incorporate language authorizing the inclusion of compliance schedules in NPDES permits under certain circumstances.
11. The Regional Board prepared and distributed written reports (staff reports) regarding adoption of the Basin Plan amendment in accordance with applicable state and federal environmental regulations (California Code of Regulations, Section 3775, Title 23, and 40 CFR Parts 25 and 131).
12. The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration. The Basin Plan amendment package includes staff reports, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendment, and a discussion of alternatives. The Basin Plan amendment, Environmental Checklist, staff reports, and supporting documentation are functionally equivalent to an Environmental Impact Report or Negative Declaration.
13. On May 19, 2000, the Regional Board held a Public Hearing to consider the Basin Plan amendment. Notice of the Public Hearing was given to all interested persons and published in accordance with Water Code Section 13244.
14. The Basin Plan amendment must be submitted for review and approval by the SWRCB, OAL and EPA. Once approved by the SWRCB, the amendment is submitted to OAL and EPA. The Basin Plan amendment will become effective upon approval by OAL and EPA. A Notice of Decision will be filed.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Regional Board adopts the amendment to the Water Quality Control Plan for the Santa Ana River Basin (Region 8) as set forth in the attachment.
2. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirement of Section 13245 of the California Water Code.
3. The Regional Board requests that the SWRCB approve the Basin Plan amendment in accordance with the requirements of Sections 13245 and 13246 of the California Water Code and forward it to the Office of Administrative Law and the U.S. Environmental Protection Agency for approval.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on May 19, 2000.

Gerard J. Thibeault
Executive Officer

Basin Plan Amendment – Language Authorizing the Inclusion of Compliance Schedules in NPDES Permits:

Add to end of Chapter 4, “Water Quality Objectives”:

COMPLIANCE WITH OBJECTIVES

“The Regional Board recognizes that immediate compliance with new, revised or newly interpreted water quality objectives adopted by the Regional Board or the State Water Resources Control Board, or with new, revised or newly interpreted water quality criteria promulgated by the U.S. Environmental Protection Agency, may not be feasible in all circumstances. Where the Regional Board determines that it is infeasible for a discharger to comply immediately with effluent limitations specified to implement such objectives or criteria, compliance shall be achieved in the shortest practicable period of time, not to exceed ten years after the adoption or interpretation of applicable objectives or criteria.

This provision authorizes schedules of compliance for objectives and criteria that are adopted or revised or newly interpreted after the effective date of this amendment (specify effective date here).”

Add to Chapter 5 “Implementation” at end of section titled “National Pollutant Discharge Elimination System (NPDES) Permits”

Where the Regional Board determines that it is infeasible to achieve immediate compliance with an effluent limitation specified to implement a new, revised or newly interpreted water quality objective, whether numeric or narrative, adopted by the Regional Board or State Water Resources Control Board, or with a new, revised or newly interpreted water quality criterion promulgated by the U.S. Environmental Protection Agency, the Regional Board may establish a schedule of compliance in a discharger’s waste discharge requirements (NPDES permit). The schedule of compliance shall include a time schedule for completing specific actions that demonstrate reasonable progress toward attainment of the effluent limitation and, thereby, the objective or criterion. The schedule shall contain a final compliance date, based on the shortest practicable time (determined by the Regional Board at a public hearing) required to achieve compliance. In no event shall an NPDES permit include a schedule of compliance that allows more than ten years from the date of adoption or interpretation of the applicable objective or criterion. Schedules of compliance are authorized by this provision only for those effluent limitations that implement objectives and criteria adopted, revised or newly interpreted after the effective date of this provision (specify effective date here).”

To document the need for and justify the duration of any such compliance schedule, a discharger must submit the following information, at a minimum: (1) the results of a diligent effort to quantify pollutant levels in the discharge and the sources of the pollutant(s) in the waste stream; (2)

documentation of source control efforts currently underway or completed, including compliance with any Pollution Prevention programs that have been established; (3) a proposed schedule for additional source control measures or waste treatment; (4) the discharge quality that can reasonably be achieved until final compliance is attained; and (5) a demonstration that the proposed schedule is as short as possible, taking into account economic, technical and other relevant factors. The need for additional information and analyses will be determined by the Regional Board on a case-by-case basis."